

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

Roland Cody,  Plaintiff,  -v-  Kent Building Services, LLC,  Defendant.	<b>Civ. Action #:</b>  <u><b>Complaint</b></u>  <b>Jury Trial Demanded</b>
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Plaintiff Roland Cody ("Plaintiff" or "Cody"), by Abdul Hassan Law Group, PLLC, his attorney, complaining of Defendant Kent Building Services, LLC ("Defendant"), respectfully alleges as follows:

**NATURE OF THE ACTION**

1. Plaintiff alleges that he was employed by Defendant and pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 216 (b), he is: (i) entitled to unpaid overtime wages from Defendant for working more than forty hours in a week and not being paid an overtime rate of at least 1.5 times his regular rate for such hours over forty in a week; and (ii) entitled to maximum liquidated damages and attorneys' fees pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. including 29 U.S.C. § 216(b).
2. Plaintiff further complains pursuant to New York Labor Law, that he is: (i) entitled to unpaid overtime wages from Defendant for working more than forty hours in a week and not being paid an overtime rate of at least 1.5 times his regular rate for such hours over forty in a week, (ii) is entitled to maximum liquidated damages and attorneys fees, pursuant to the New York Minimum Wage Act ("NYMWA"), N.Y. Lab. Law §§ 650 et seq., including NYLL § 663, and the regulations thereunder.
3. Plaintiff is also entitled to recover his unpaid wages, and wage deductions, under Article 6 of the New York Labor Law including Section 191, 193, and compensation for not receiving notices and statements required by NYLL 195, under Article 6 of the New York Labor Law and is also entitled to maximum liquidated damages, interest, and attorneys' fees pursuant to

Section 198 of the New York Labor Law.

4. Plaintiff alleges that he was employed by Defendant and pursuant to the Family and Medical Leave Act (“FMLA”) 29 USC § 2601 et seq., Defendant violated the FMLA, including 29 U.S.C § 2614, § 2615, when it terminated/discharged and failed to reinstate Plaintiff’s employment with it in retaliation/discrimination because Plaintiff exercised his rights and engaged in protected activity under the FMLA – including requesting and taking FMLA-protected leave. Plaintiff seeks the recovery of lost income including back pay and front pay/reinstatement, lost benefits, other losses and damages caused, interest, maximum liquidated damages, as well as attorneys’ fees and costs, pursuant to 29 USC § 2617. 2.

#### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1337. In addition, the Court has jurisdiction over plaintiff’s claim under the Fair Labor Standards Act pursuant to 29 U.S.C. § 216 (b) and 29 USC § 2617.
6. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1331(b) and 29 USC § 216(b).
7. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2202, 2201.

#### **THE PARTIES**

8. Plaintiff Roland Cody (“Plaintiff” or “Cody”) is an adult, over eighteen years old, who currently resides in Queens County in the State of New York.
9. Upon information and belief and all times relevant herein, Defendant Kent Building Services, LLC (“KBS”) was a for-profit limited liability company.
10. Upon information and belief and at all times relevant herein, Defendant controlled the employment of Plaintiff and was responsible for hiring, firing, scheduling, controlling,

managing, supervising, and record-keeping as to Plaintiff's employment, among other employment functions, and performed such functions as to Plaintiff.

11. Upon information and belief, Defendant had a place of business in New York County, New York at 150 West 28th Street, New York, NY 10001.
12. At all times relevant herein, Plaintiff was employed by Defendant.

#### **STATEMENT OF FACTS**

13. Upon information and belief, and at all relevant times herein, Defendant was in the business of providing security, janitorial, maintenance and other related services to their clients.
14. Upon information and belief, and at all relevant times herein, Defendant employed 100 or more employees.
15. At all times relevant herein, Plaintiff was employed by Defendant as a maintenance worker performing a variety of manual and physical duties within this capacity throughout his workday, including cleaning, repairs, etc.
16. Plaintiff was employed by Defendant from in or around June 2019 to on or about June 7, 2024.
17. At all times relevant herein, Plaintiff was an hourly employee of Defendant and his last regular hourly rate of pay was about \$25.00 an hour.
18. At all times relevant herein, Plaintiff worked about 50-60 or more hours each week, 5-7 days each week for Defendant and Plaintiff was not paid for each and all overtime hours worked in each week (hours over 40 hours in a week) - with the exception of about 2-3 weeks each year.
19. At all times relevant herein, Defendant had a policy and practice of improperly deducting about 30 minutes or more each day from Plaintiff's work time. However, due to the demands

of his job, Plaintiff did not receive a “bona fide” meal break within the meaning of the FLSA and NYLL – as further reflected in the time records. 29 C.F.R. § 785.18; 29 C.F.R. § 785.19. As a result, Plaintiff is owed overtime wages for about 2.5-3 overtime hours worked each week during his employment with Defendant - with the exception of about 2-3 weeks each year, which he seeks to recover with this action and for which he was not paid any wages. At all times relevant herein, Plaintiff either did not receive a “meal” break or was not completely relieved from duty during “meal” breaks, if any, because he was always subject to interruption during “meal” breaks if any and was actually interrupted to perform his regular physical work during any “meal” breaks because of the nature and demands of the job as required by Defendant. See i.e. *Herrera v. Comme des Garcons, Ltd.*, 84 F.4th 110, 116 (2d Cir. 2023).

20. In addition to the unpaid wages set forth in paragraph 19, Plaintiff worked on-call for an additional 15-20 overtime hours each week for which he was not paid any wages in violation of the FLSA and NYLL. See i.e. 29 CFR § 785.17; 29 CFR § 785.16(a), etc. – with the exception of about 2-3 weeks each year.
21. A more precise statement of the hours and wages will be made when Plaintiff obtains the wage and time records Defendant was required to keep under the FLSA and NYLL. *Accurate* copies of Plaintiff’s wage and time records that Defendant was required to keep pursuant to 29 USC 211, 29 CFR 516 and NYLL 195, 12 NYCRR 142.2-6 are incorporated herein by reference.
22. At all times relevant herein, Plaintiff was required by Defendant to use his own cellphone and other expenses in the performance of his work for Defendant during the period of his employment. However, Defendant failed to reimburse Plaintiff for about at least \$30.00 or more each week which constitutes an unlawful deduction under the FLSA and NYLL including NYLL § 193 and resulted in a further underpayment of overtime wages each week.
23. At all times relevant herein and for the time Plaintiff was employed by Defendant, Defendant failed and willfully failed to pay Plaintiff an overtime rate of at least 1.5 times his regular rate of pay for all hours worked in excess of forty hours in a week.

24. At all times relevant herein, neither Defendant provided Plaintiff with the notice(s) required by NYLL 195(1). See i.e. *Alonso Vazquez v. Azoulay*, 834 F. App'x 653, fn 1 (2d Cir. 2021)(“For example, the purported hiring notice Azoulay cites lacks required information about the employer (such as contact information and the corporate or business name), as well as required information about tip credit or tip policy. Similarly, Azoulay relies on purported wage notices that lack required information regarding all hours worked and wages paid. See Appellee Br. at 16-21.”).
25. At all times relevant herein, neither Defendant provided Plaintiff with the statement(s) required by NYLL 195(3) – the wage statements provided to Plaintiff did not contain all hours worked by Plaintiff nor all wages earned, among other deficiencies. See i.e. *Alonso Vazquez v. Azoulay*, 834 F. App'x 653, fn 1 (2d Cir. 2021)(“For example, the purported hiring notice Azoulay cites lacks required information about the employer (such as contact information and the corporate or business name), as well as required information about tip credit or tip policy. Similarly, Azoulay relies on purported wage notices that lack required information regarding all hours worked and wages paid. See Appellee Br. at 16-21.”).
26. Upon information and belief, and at all times relevant herein, Defendant had revenues and/or transacted business in an amount exceeding \$500,000 annually.
27. Upon information and belief and at all times relevant herein, Defendant conducted business with vendors and other businesses outside the State of New York.
28. Upon information and belief and at all times relevant herein, Defendant conducted business in interstate commerce involving the purchase of machinery, equipment and other essential supplies for its business.
29. Upon information and belief and at all times relevant herein, Defendant as a regular part of their business, makes payment of taxes and other monies to agencies and entities outside the State of New York.

30. Upon information and belief and at all times relevant herein, Defendant as a regular part of its business, engaged in credit card transactions involving banks and other institutions outside the state of New York.
31. Upon information and belief and at all times relevant herein, Defendant transacted business with insurance companies, banks and similar lending institutions outside the State of New York.
32. Upon information and belief and at all times relevant herein, Defendant utilized the instrumentalities of interstate commerce such as the United States mail, internet electronic mail and telephone systems.
33. Upon information and belief, and at all relevant times herein, Defendant failed to notify Plaintiff of his federal and state minimum wage and overtime rights and failed to inform Plaintiff that he could seek enforcement of such rights through the government enforcement agencies. As such, equitable tolling applies in this case. See i.e. *Veltri v. Building Service 32B-J Pension Fund*, 393 F.3d 318, 324 (2d Cir. 2004); *Kim v. Kum Gang, Inc.*, No. 12 CIV. 6344 MHD, 2015 WL 2222438, at 33–34 (S.D.N.Y. Mar. 19, 2015).
34. A few days before June 10, 2024, Plaintiff notified Defendant that he will be having surgery including hand surgery in the hospital and he will be incapacitated for about 3-4 weeks. In response, Defendant agreed to the leave and Plaintiff did in fact have the surgery in the hospital on June 10, 2024 and was unable to perform his work for about 3-4 weeks after which he was ready, willing and able to work. However, in response, Defendant refused to reinstate Plaintiff and terminated his employment as a result.
35. Plaintiff was intentionally/willfully and unlawfully terminated/discharged by Defendant because he engaged in protected activity in the form of taking FMLA leave.
36. “Plaintiff” as used in this complaint refers to the named Plaintiff.
37. The “present” or the “present time” as used in this complaint refers to the date this complaint

was signed.

**AS AND FOR A FIRST CAUSE OF ACTION**

**FAIR LABOR STANDARDS ACT - 29 U.S.C 201 et Seq. - Unpaid Overtime**

38. Plaintiff alleges and incorporates by reference the allegations in paragraphs 1 through 37 above as if set forth fully and at length herein.
39. At all times relevant to this action, Plaintiff was employed by Defendant within the meaning of the FLSA – 29 USC 201 et Seq.
40. At all times relevant to this action, Plaintiff was engaged in commerce and/or in the production of goods for commerce and/or Defendant constituted an enterprise(s) engaged in commerce within the meaning of 29 U.S.C. § 207.
41. At all times relevant herein, Defendant transacted commerce and business in excess of \$500,000.00 annually or had revenues in excess of \$500,000.00 annually.
42. At all times relevant herein, Defendant failed and willfully failed to pay Plaintiff overtime compensation at rates of at least 1.5 times his regular rate of pay for each hour worked in excess of forty hours in a work week, in violation of 29 U.S.C. § 207.

**Relief Demanded**

43. Plaintiff is entitled to recover from Defendant his unpaid overtime compensation, maximum liquidated damages, attorney's fees, and costs of the action, pursuant to 29 U.S.C. § 216(b).

**AS AND FOR A SECOND CAUSE OF ACTION**

**NYLL 650 et Seq. and 12 NYCRR 142-2.2 etc. (Unpaid Overtime)**

44. Plaintiff alleges, and incorporates by reference the allegations in paragraphs 1 through 42 above as if set forth fully and at length herein.
45. At all times relevant to this action, Plaintiff was employed by Defendant within the meaning

of the New York Labor Law, §§ 2 and 651 and the regulations and wage orders thereunder including 12 NYCRR § 142.

46. At all times relevant herein, Defendant failed and willfully failed to pay Plaintiff overtime compensation at rates of at least 1.5 times his regular rate of pay for each hour worked in excess of forty hours in a work-week, in violation of the New York Minimum Wage Act and its implementing regulations and wage orders. N.Y. Lab. Law §§ 650 et seq., including 12 NYCRR § 142-2.2.

**Relief Demanded**

47. Plaintiff is entitled to recover from Defendant, his unpaid wages, his overtime wages, prejudgment interest, maximum liquidated damages, reasonable attorneys' fees, and costs of the action, pursuant to N.Y. Labor L. § 663(1) and the regulations thereunder.

**AS AND FOR A THIRD CAUSE OF ACTION**

**NYLL § 190, 191, 193, 195 and 198**

48. Plaintiff alleges, and incorporates each and every allegation contained in paragraphs 1 through 47 above with the same force and effect as if fully set forth at length herein.
49. At all times relevant to this action, Plaintiff was employed by Defendant within the meaning of the New York Labor law, §§ 190 et seq., including §§ 191, 193, 195 and 198 and the applicable regulations thereunder.
50. Defendant violated and willfully violated NYLL §§ 190 et seq., including §§ 191, 193 and 198, by failing to pay Plaintiff his unpaid overtime wages, and non-overtime wages, Plaintiff was entitled to within the time required by NYLL §§ 191, 193 and 198.
51. At all times relevant herein, Defendant failed and willfully failed to provide Plaintiff with the notice(s) required by NYLL 195(1) – Plaintiff is therefore entitled to and seeks to recover in this action the maximum recovery for this violation, plus attorneys' fees and costs pursuant to NYLL 198 including NYLL 198(1-b), as well as an injunction directing Defendant to

comply with NYLL 195(1).

52. At all times relevant herein, Defendant failed and willfully failed to provide Plaintiff with the statement(s) required by NYLL 195(3) – Plaintiff is therefore entitled to and seeks to recover in this action the maximum recovery for this violation, plus attorneys' fees and costs pursuant to NYLL 198 including NYLL 198(1-d), as well as an injunction directing Defendant to comply with NYLL 195(1).

**Relief Demanded**

53. Plaintiff is entitled to recover from Defendant his entire unpaid wages, including his unpaid overtime, wage deductions, maximum liquidated damages, prejudgment interest, maximum recovery for violations of NYLL 195(1) and NYLL 195(3), reasonable attorneys' fees, and costs of the action, pursuant to N.Y. Labor Law § 190 et seq. including § 198.

**AS AND FOR A FOURTH CAUSE OF ACTION**

**FMLA RETALIATION/DISCRIMINATION - 29 U.S.C § 2617**

54. Plaintiff alleges and incorporates by reference the allegations in paragraphs 1 through 53 above as if set forth fully and at length herein.
55. At all times relevant to this action, Plaintiff was employed by Defendant within the meaning of the FMLA, 29 USC § 2601 et Seq., and the regulations thereunder.
56. At all times relevant herein, Defendant was a covered person or entity within the meaning of the FMLA, 29 USC § 2601 et Seq.
57. Defendant discharged/terminated Plaintiff, in retaliation/discrimination and in violation of the FMLA including 29 USC § 2615 for engaging in protected activity as laid out above such as exercising his FMLA rights by requesting and taking FMLA leave.
58. Plaintiff is entitled to recover from Defendant under the FMLA including 29 USC § 2617 all his damages recoverable under the FMLA, including his loss of income such as back pay

and front pay/reinstatement, other losses and damages caused, interest, maximum liquidated damages, costs and attorneys' fees.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that this Court grant the following relief:

57. Declare Defendant to be in violation of the Plaintiff's rights under the Fair Labor Standards Act, Article 6 of the New York Labor Law, the New York Minimum Wage Act, and the Regulations thereunder;
58. As to the **First Cause of Action**, award Plaintiff his unpaid overtime wages due under the FLSA, together with maximum liquidated damages, costs and attorney's fees pursuant to 29 USC § 216(b);
59. As to his **Second Cause of Action**, award Plaintiff his unpaid overtime wages, due under the New York Minimum Wage Act and the Regulations thereunder including 12 NYCRR §§ 142-2.2, together with maximum liquidated damages, prejudgment interest, costs and attorney's fees pursuant to NYLL § 663;
60. As to his **Third Cause of Action**, award Plaintiff all outstanding wages, including unpaid non-overtime and overtime wages, and wage deductions, plus maximum liquidated damages, maximum recovery for violations of NYLL 195(1) and NYLL 195(3), reasonable attorneys' fees, and costs of the action, pursuant to N.Y. Labor Law § 190 et seq. including § 198, and issue an injunction directing Defendant to comply with NYLL 195(1) and NYLL 195(3).
61. As to the **Fourth Cause of Action**, award Plaintiff pursuant to FMLA including 29 USC § 2617 all his damages recoverable under the FMLA, including his loss of income such as back pay and front pay/reinstatement, other losses and damages caused, interest, maximum liquidated damages, costs and attorneys' fees.
62. Award Plaintiff prejudgment interest on all monies due;

63. Award Plaintiff any relief requested or stated in the preceding paragraphs but which has not been requested in the WHEREFORE clause, in addition to the relief requested in the wherefore clause;
64. Award Plaintiff such other, further and different relief as the Court deems just and proper.

**Dated: Queens Village, New York  
July 30, 2024**

Respectfully submitted,

Abdul Hassan Law Group, PLLC

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